

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WP(C).No. 30025 of 2008 (Y)

PETITIONER(S):

**LALITHA M.P., PONNORE HOUSE,
IDAKALATHUR P.O., TRICHUR.**

**BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR**

RESPONDENT(S):

- 1. THE INDUSTRIAL TRIBUNAL, PALAKKAD.**
- 2. THE BOARD OF DIRECTORS OF THE PARAPPUR
SERVICE CO-OPERATIVE BANK LTD.NO.474, P.O.PARAPPUR
TRICHUR, REPRESENTED BY, ITS PRESIDENT.**
- 3. THE PARAPPUR SERVICE CO-OPERATIVE BANK
LTD NO. 474, PARAPPUR, TRICHUR
REPRESENTED BY ITS SECRETARY.**

**R,R2 & 3 BY ADV. SRI.P.RAMAKRISHNAN
R BY GOVERNMENT PLEADER SRI. BIJU MEENATTOOR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1 COPY OF THE SHOW CAUSE NOTICE DATED 29.10.03.
- EXT.P2 COPY OF THE REPLY DTD. 31.10.03.
- EXT.P3 COPY OF THE ORDER OF THE SUSPENSION DTD.5.11.03.
- EXT.P4 COPY OF THE MEMO DTD. 14.3.04.
- EXT.P5 COPY OF THE CLAIM STATEMENT DTD. 4.11.06.
- EXT.P6 COPY OF THE PRELIMINARY ORDER IN I.D. 42 OF 2006 DTD. 5.1.08
- EXT.P7 COPY OF THE WARD IN I.D. NO. 42 OF 2006 DTD. 25.7.08
- EXT.P8 COPY OF THE DEPOSITION OF MW1 DTD. 3.5.08 IN I.D 42 OF 2006.
- EXT.P9 COPY OF THE NOTICE DTD. 20.12.01 ISSUED BY THE 3RD
RESPONDENT TO THE PETITIONER IN MDS 23/99.
- EXT.P10 COPY OF THE NOTICE DTD. 2012.01 ISSUED BY THE 3RD
RESPONDENT TO THE PETITIONER IN MDS 24/99.

RESPONDENTS EXHIBITS: **NIL**

// TRUE COPY //

PA to Judge

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.30025 of 2008 - Y

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Dated this the 18th day of February, 2015

J U D G M E N T

The petitioner is aggrieved with the order of the Industrial Tribunal, Palakkad; at Ext.P7. The petitioner was appointed as a Junior Clerk in the respondent Bank on 25.05.1987 and in 1990 she was promoted to the post of Senior Clerk. The petitioner was issued with Ext.P1 show cause notice dated 29.10.2003, wherein, certain allegations were made with respect to the handling of three loan accounts. Pursuant to Ext.P1 show cause notice, the petitioner was also suspended as per Ext.P3, despite her explanation at Ext.P2. Then by Ext.P4 dated 14.03.2004, another show cause notice was issued raising different allegations from Ext.P1.

2. An enquiry was ordered, which ended in finding the petitioner guilty of all the charges levelled in

Ext.P4 and the disciplinary authority dismissed the petitioner from the service of the employer Bank. The petitioner filed an appeal to the management committee and the petitioner sought a reference in which Ext.P5 claim was filed.

3. The Industrial Tribunal after examining the enquiry files, produced by the Enquiry Officer, found that the enquiry was held in a proper manner. However, with respect to the findings on the charges levelled, the Industrial Tribunal found that except for one charge, the other charges were not proved. The management was granted an opportunity to adduce evidence to prove the other charges. By Ext.P7 award, the management was found to have adduced evidence, only with respect to the charge, which the Tribunal had already found to be proved on the basis of the enquiry report. Considering the aforesaid charge to be one of serious dereliction of duty of a Bank employee, the Tribunal came to the conclusion that the misconduct warranted a major punishment. However,

considering the gravity of the offence, the Tribunal interfered with the punishment of dismissal and directed punishment of compulsory retirement, from the date of the award. No back wages were granted.

4. The petitioner challenges the same on the ground that, there was no sustainable evidence to prove the one charge and the charge sheet itself was vague, insofar as the said charge was concerned. It is also contended that the second show cause notice issued and produced at Ext.P4, differed substantially from Ext.P1, and that itself would disclose the malafides of the respondent Bank and vitiate the enquiry.

5. At the outset, it is to be noticed that, Ext.P1 charge sheet was issued at the initial stage and the petitioner was suspended in accordance with the same. A further charge sheet was issued at Ext.P4 and the enquiry was proceeded with only on the charges levelled at Ext.P4 and not at Ext.P1. Definitely, the petitioner could have challenged the suspension made pursuant to Ext.P1, but

that does not assume any relevance at this point of time. This Court is called upon to consider the award of the Industrial Tribunal, imposing the punishment of compulsory retirement, for the one charge held to have been proved in the domestic enquiry and before the Tribunal.

6. The management has not challenged the order of the Industrial Tribunal. Hence, this Court would only consider the one charge levelled by the management which stands proved in the enquiry, as also before the Labour Court. The third charge levelled in Ext.P4, relates to the MDS advance in two accounts bearing Nos. 23 of 1998 and 24 of 1999. The charge refers to the petitioner being a surety to the said loans, and the financial indiscipline insofar as the conduct of the petitioner, with respect to the kurries and loans.

7. The Industrial Tribunal even, in the preliminary order found that the said charge stands proved, as against the petitioner. Even in the denovo opportunity, granted to the management; the management produced

Exts.M2 to M6(b) documents again, in substantiation of the said charge. The Tribunal found that the petitioner had stood as surety for the two MDS loans taken in the names of third parties being Reetha and Joju. Though standing as a surety may not be a misconduct as such, the Tribunal found that it was further proved that the loan amounts disbursed were received by the petitioner and the same was recovered from her salary. The specific finding was that they are binami transactions and the worker herself was the beneficiary of these MDS loans.

8. True, there is no allegation of a binami transaction having been entered into. But, however the fact that the petitioner had accepted the money disbursed in the loan; allegedly on behalf of the loanees stands proved. In such circumstance, it was the duty of the petitioner to have proved before the Enquiry Officer as also before the Labour Court that in fact the amounts were handed over to the third parties, loanees, who are said to be the members of the petitioner Bank. The explanation that the staff

members of the Bank were helping the customers, who were also members of the Bank cannot be countenanced. It cannot at any rate result in the staff members accepting money disbursed in a loan account, which loan is availed of by the members. The acceptance of the amounts, by the petitioner has been admitted by her, before the Enquiry Officer and the Labour Court. The fact that the amounts were recovered from the petitioner's salary is also not disputed.

9. The learned Counsel for the petitioner would in fact submit that there was another surety to one of the loans as is indicated in Ext.P10, being one P.L. Iyappan, who was the Manager of the Bank. Hence, there was a practice, which existed, by which the employees stood as sureties and also accepted amounts on behalf of the loanees, which were later handed over to the respective loanees, is the contention. As was noticed above, the mere fact of the staff standing surety to a loan; itself may not be a misconduct, but, however, the fact that the money

disbursed in such loan being received by the staff member, who stood as surety cannot be lightly treated. The finding of the Labour Court that a major punishment, is warranted cannot be disturbed. The Labour Court has under Section 11A of the Industrial Disputes Act, 1947 interfered with the punishment of dismissal and granted compulsory retirement, as on the date of the award. In such circumstance, this Court does not find any reason to cause further interference in the punishment.

The writ petition would stand dismissed. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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P.A to Judge